* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ Bail Application No.4561/2006

% Date of Decision : 17th of August, 2007

NARESH KUMAR .....Petitioner
! (IN J.C.) Through : Mr. D.C. Mathur, Sr. Adv. with Mr. Mohit Mathur & Mr. Shishir Mathur, Advs.

versus

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STATE (N.C.T. OF DELHI) .....Respondent
^ Through : Mr. Anil Soni, Advocate

* CORAM:
HON'BLE MR. JUSTICE B.N. CHATURVEDI

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

: **B.N.CHATURVEDI, J.**

1. The petitioner is an accused in case FIR No.383/2006 under Sections 302/364/148/149/409/201/477A/120-B/34 IPC PS Timarpur,

Delhi. He seeks his release on bail under Section 439 Cr.P.C.

2. Relevant facts as emanating from the FIR which was registered on a complaint by the father of Zulfikar @ Zulfi and Nazakat, deceased on 1st August, 2006 are that on 31st July, 2006 Zulfikar @ Zulfi and Nazakat appeared as accused before a Sessions court at Ghaziabad in a S.T. No.221/2004 – State Vs. Nafis - under Sections 147/ 148/149/302/394 IPC PS Pilkhuwa. At about 2.30 PM the case was adjourned to 18th August, 2006. On Zulfikar @ Zulfi and Nazakat coming out of the court room, Irfan and Jamshed Ali met them there at Collectorate. While four of them were talking to each other, co-accused Constable Ashok, accompanied by ¾ police officials of Delhi Police came over there. They talked to Zulfikar @ Zulfi and Nazakat for a while and then took them along saying that further

talks could be held while sitting in the vehicle. On 1st August, 2006 morning, from a newspaper reporting, the father of Zulfikar @ Zulfi and Nazakat learnt that both of them had been killed by Delhi Police in a fake encounter. The case which was pending before the Sessions Court at Ghaziabad pertained to the murder of brother of co-accused Constable Ashok, in which according to the complainant his two sons were falsely implicated. On the aforesaid complaint a case FIR No.Nil/2006 under Sections 364/302 IPC was registered against co-accused Constable Ashok and others at PS Kavi Nagar, Ghaziabad. The case was later transferred to Delhi Police on 10th August, 2006 whereupon a FIR No.383/2006 was registered at PS Timarpur, Delhi.

3. Prior to registration of said FIR another FIR No.359/2006 under Sections 186/353/307/34 IPC and 25/27 Arms Act on the basis of an information

given by co-accused ASI Pramod Kumar Tyagi, had been registered at PS Timarpur, Delhi. In this FIR it was stated that on 31st July, 2006 pursuant to a secret information while ASI Pramod Kumar Tyagi alongwith Head Constable Yashpal, Constable Sudesh Rana, Constable Pradeep Singh, Constable Ravinder Kumar, Constable Satish Kumar and Constable/Driver Naresh Kumar, being the driver of the Tempo Traveller No.DL-1V-2879, was in east Delhi area at about 3.30 pm he received an information that two gangsters namely Zulfikar @ Zulfi and Nazakat were to come from Wazirabad side to pass through Jagatpuri village in a stolen white Maruti van and that both of them were armed with unlicensed weapons and were likely to commit some crime. Co-accused ASI Pramod Kumr Tyagi assisted by police party consisting of aforesaid police officials eventually succeeded in intercepting the stolen white

Maruti van and in the course of an encounter, which allegedly ensued both Zulfikar @ Zulfi and Nazakat, who were there in the said Maruti van, got injured in the course of firing by the police party in their self defence and later succumbed to the gun shot injuries at Trauma Centre.

4. Learned Senior counsel appearing for the petitioner argued that the petitioner being the driver of Tempo Traveller No.DL-1V-2879 had simply acted in terms of direction of his superior officer co-accused ASI Pramod Kumar Tyagi without being in the know of alleged criminal conspiracy to eliminate Zulfikar @ Zulfi and Nazakat and the only offence which he can at best be said to have committed relates to making of false entry in the log book which is a bailable one. Learned Senior counsel referred to disclosure statement of one of the co-accused to show that the petitioner was not aware of the alleged criminal

conspiracy prior to Zulfikar @ Zulfi and Nazakat being killed in the fake encounter.

5. On behalf of the State it was, on the other hand, contended that the petitioner was very much aware of the criminal conspiracy and that he deliberately made a false entry in the log book with a view to cover up the factum of the vehicle driven by him being taken to Ghaziabad to abduct the said two persons from Ghaziabad District Court Complex in order to help his co-accused to eliminate them in a fake encounter. Learned Addl. P.P. submitted that the petitioner being driver of the vehicle could not take the vehicle to Ghaziabad without due permission in that regard. He argued that not only that the petitioner made false entry in his log book, he also omitted to tell his superiors about the fake encounter when his superior officers visited the scene of fake encounter. It was pointed out by learned Addl. P.P.

that the charge sheet in the matter has already been filed and in the event of petitioner being released on bail there is reasonable apprehension of his trying to tamper with the evidence by intimidating or otherwise influencing the public witnesses. Reference was made to two complaints already made by the complainant and PWs Jamshed Ali and Irfan to the police regarding threats received by them from the accused. It was pointed out that the petitioner is not a person with clean antecedents in as much as he is an accused in a case FIR No.335/1999 under Sections 3, 4, 5, 6 and 8 of ITP Act PS Prashant Vihar, Delhi for being found present at and arrested from a brothel.

6. In the course of investigation from the statement of PW Kunwar Ayub Ali, Advocate, who was representing Zulfikar @ Zulfi and Nazakat, deceased before Ghaziabad Sessions Court in

Sessions Trial No.221/2004 and a certified copy of order sheet dated 31st July, 2006 of the court concerned, it is gathered that Zulfikar @Zulfi and Nazakat deceased had appeared before the Ghaziabad court in the said case on 31st July, 2006 and that they had left the court room at about 2.00 to 2.30 PM on the case being adjourned to 18th August, 2006. The statements of PWs Jamshed Ali and Irfan who were there in the company of the said two deceased persons at Ghaziabad Collectorate before they were taken away by co-accused Constable Ashok and other officials of Delhi Police also confirm the presence of Zulfikar @ Zulfi and Nazakat at Ghaziabad District Court Complex upto 2 to 2.30 pm on 31st July, 2006. There is thus a prima facie case of Zulfikar @ Zulfi and Nazakat being lifted from Ghaziabad District Court Complex on 31st July, 2006 after 2/2.30 pm.

7. In terms of log book entry the vehicle driven

by the petitioner was shown to have covered a total distance of 75 kms. The relevant entry in the log book of the vehicle was cross checked by way of a trial run of the route traversed as per log book and it was discovered that in terms of log book the total distance of the route measured 47.8 km only while the actual distance covered was 75 km leaving a deficiency by 28 kms. This deficient distance of 28 km could be made good if the vehicle travels from Gagan Cinema to Ghaziabad District Court Complex and back. The fact that the vehicle was taken to Ghaziabad District Court Complex is sought to be corroborated by the Cell ID locations of the members of the raiding party.

8. Prime accused ASI Pramod Kumar Tyagi and Constable Sudesh Rana appear to be absconding and are yet to be arrested. The acts of commission and omission on the part of petitioner in the face of

evidence available on record prima facie appear to show that the making of false entry in the log book by the petitioner was designed at preventing detection of the vehicle driven by him being taken to Ghaziabad to abduct Zulfikar @ Zulfi and Nazakat and also to escape an explanation for taking the vehicle outside the territorial limits without any permission in that regard. Further, the petitioner keeping quiet about the entire incident and not telling true facts to his superiors is also prima facie indicative of his having acted in league with his co- accused. The petitioner cannot fall back upon an inadmissible piece of disclosure statement of one of the co-accused to plead that he was unaware of the alleged criminal conspiracy hatched among his co- accused. Further, in view of complaints of threats administered to the complainant and the two public witnesses, there is a reasonable apprehension of the petitioner, in case of

his release on bail, misusing the liberty by intimidating or otherwise influencing the public witnesses and thereby tampering with the evidence.

9. In the light of evidence available on record and the nature as also seriousness of the offence allegedly committed by the petitioner and his co accused, no good ground is made out for his being enlarged on bail. The petition is thus dismissed.

10. Nothing stated herein tantamounts to expression of opinion on merits of the case.

(B.N.CHATURVEDI)
JUDGE

August 17, 2007
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